

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Hearing Date: June 21, 2011 at 10:00 a.m. ET

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In re: Chapter 11
DPH HOLDINGS CORP., *et al.*, Case No. 05-44481 (RDD)
(Jointly Administered)

DELPHI AUTOMOTIVE SYSTEMS, LLC, Plaintiffs, v.
Plaintiffs, v.
DUPONT COMPANY, DUPONT POWDER COATINGS USA INC., AND E I DUPONT DE NEMOURS & CO. INC., Defendants.-----X
Defendants.-----X
Adv. Pro. No. 07-02242 (RDD)

**JOINDER OF DUPONT POWDER COATINGS USA, INC. TO THE SUR REPY BRIEFS
FILED IN FURTHER OPPOSITION TO THE REORGANIZED DEBTORS'
MOTION FOR LEAVE TO FILE AMENDED COMPLAINTS**

Dupont Powder Coatings USA, Inc. (“**Defendant**”), by its attorneys, Phillips Lytle LLP, hereby joins in and adopts (“**Joinder**”), with respect to the above-captioned adversary proceeding, the arguments set forth in the following sur reply briefs filed by other defendants in the various avoidance actions commenced by DPH Holdings Corp. (“**Reorganized Debtors**”) in further opposition to the Reorganized Debtors’ Motion to Leave to File Amended Complaints (“**Motion for Leave**”) (Case Docket No. 20575) (A.P. Docket No. 29):

- (I) Sur-Reply of Johnson Controls, Johnson Controls Battery Group, and Johnson Controls, Inc. in Further Opposition to Plaintiff’s Motion for Leave to File a First Amended Complaint (Case Docket No. 21312) (“**Antecedent Debt Sur Reply Brief**”);
- (II) Methode Electronics, Inc.’s Sur-Reply in Support of Its Objection to the Reorganized Debtors’ Motion for Leave to File Amended Complaints (Case Docket No. 21319) (“**Other Antecedent Debt Sur Reply Brief**”); and

(III) Sur-Reply of The Timken Company and The Timken Corporation in Further Opposition to Reorganized Debtors' Motion for Leave to File Amended Complaints (Case Docket No. 21329) ("**Relation Back Sur Reply Brief**").

(collectively, the "**Sur Reply Briefs**"). In support of this Joinder and in further opposition to the Motion for Leave, the Defendant respectfully represents as follows:

1. On November 24, 2011, Defendant filed the Objection of Dupont Powder Coatings USA, Inc. and E. I. du Pont de Nemours and Company to Reorganized Debtors' Motion for Leave to File Amended Complaints ("**Objection**") (A.P. Docket No. 33) (Case Docket No. 20895), asserting that the Motion for Leave should be denied with prejudice on various grounds.

2. The Court subsequently conducted a telephone conference on December 17, 2010 regarding the Motion for Leave. During the December 17, 2010 telephone conference, the Court requested that the Defendant provide the Reorganized Debtors with information concerning defendants that received less than \$250,000 in alleged preferential transfers ("**Transfers**") and directed the Reorganized Debtors to dismiss any claims for such Transfers from the proposed amended complaint attached to the Motion for Leave ("**Amended Complaint**").

3. In accordance with the Court's instructions at the December 17, 2010 conference, the Defendant sent a letter dated December 23, 2010 to the Reorganized Debtors' counsel ("**Supplemental Objection**") (A.P. Docket No. 35), which demonstrated that Defendant did not receive Transfers in an aggregate amount greater than \$250,000.00 and, therefore, should be removed as a defendant from the Amended Complaint pursuant to the Order Granting in Part First Wave Motions to Dismiss dated September 9, 2010 (Adv. P. No. 07-2242 RDD, Docket No. 31) ("**Dismissal Order**") and this Court's instructions at the December 17, 2010 conference.

4. The Amended Complaint, on its face, alleges that Defendant received 27 Transfers in the aggregate amount of \$378,148.00. The original complaint filed in this case against Defendant identified four (4) transfers totaling \$189,074.00 – exactly one half of the aggregate amount alleged in the Amended Complaint.

5. Moreover, as set forth in the Objection and the Supplemental Objection, the Amended Complaint contains Transfers that are new and distinct from the Transfers alleged in the original complaint filed in this adversary proceeding (“**New Transfers**”). As is more fully discussed in the Objection, the Supplemental Objection, and the Relation Back Sur Reply Brief, the Amended Complaint, to the extent that it asserts the New Transfers, does not relate back to the original complaint and thus the Amended Complaint is time-barred under 11 U.S.C. § 546(a). Accordingly, the Motion for Leave as to the Defendant should be denied with prejudice for all of the reasons set forth in the Relation Back Sur Reply Brief.

6. Because the factual circumstances of the other defendants in these matters are similar to the Defendant’s factual circumstances, the Defendant respectfully incorporates all applicable arguments raised by the other defendants in the Sur Reply Briefs.

WHEREFORE, for all the reasons set forth in the Sur Reply Briefs and the Objection, the Defendant respectfully requests that the Court enter an order sustaining the Objection and denying the Motion for Leave, and for such other and further relief as the Court deems appropriate.

Dated: New York, New York
June 17, 2011

PHILLIPS LYTLE LLP

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